

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM, AND HEART OF IOWA COMMUNICATIONS COOPERATIVE	DOCKET NOS. SPU-03-16 WRU-03-71-263
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**ORDER APPROVING JOINT APPLICATION FOR DISCONTINUANCE OF  
SERVICE, AUTHORIZING TRANSFER OF CERTIFICATE,  
AND GRANTING WAIVER**

(Issued December 19, 2003)

On November 19, 2003, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom (Iowa Telecom), and Heart of Iowa Communications Cooperative (Heart of Iowa) filed a joint application for discontinuance of service and transfer of certificate pursuant to Iowa Code §§ 476.20 and 476.29. The filing indicates that Heart of Iowa has acquired from Iowa Telecom the assets to provide local exchange service in the Iowa exchanges of Conrad, Eldora, and Steamboat Rock. The acquisition will result in the discontinuance of service by Iowa Telecom and the continuance of service by Heart of Iowa, with the exception of certain calling plans (described below). The joint applicants request the transferal of Iowa Telecom's certificate for the Conrad, Eldora, and Steamboat Rock exchanges to Heart of Iowa.

The filing states that Heart of Iowa was formed in 1958 and has continuously provided local exchange service in compliance with Board rules and requirements.

Heart of Iowa is presently certified to provide service in ten Iowa exchanges (including the Conrad, Eldora, and Steamboat Rock exchanges<sup>1</sup>). Heart of Iowa states that it is ready, willing, and able to provide comparable service to the Conrad, Eldora, and Steamboat Rock exchanges.

The filing includes the Affidavit of David L. Schmidt, Manager of Heart of Iowa, who provided details about Heart of Iowa's operational plans after the transfer of the three exchanges. Mr. Schmidt indicates that local rates for transferred customers will be reduced. DSL service will be available to the transferred customers and Heart of Iowa has future plans to extend cable TV service to the three exchanges.

Mr. Schmidt states that Iowa Telecom currently offers three types of local calling plan services. The first type is the Community Plus Calling Plan, which, for a monthly charge of \$1, allows calling to all exchanges within 30 miles for a rate of \$0.09 per minute. Heart of Iowa offers the same plan. The second type is the Premium Calling Plan, which provides up to 12,500 minutes of calling per month to all exchanges within 30 miles. Iowa Telecom charges \$25 per month for residential customers and \$50 per month for business customers. The third type is the Extended Local Calling Plan, which is available only in the Eldora exchange. This plan provides 70 minutes of intraLATA calling at \$0.08 per minute for \$5 per month.

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<sup>1</sup> In an order issued June 20, 2002, in Docket Nos. SPU-02-6, WRU-02-17-482 (TCU-99-33, TCU-01-19, and TCU-02-2, the Board canceled the certificate of an affiliate of Heart of Iowa, known as Heart of Iowa Communications, Inc., which had served the Conrad, Eldora, and Steamboat Rock exchanges plus a portion of the Ackley exchange. The order amended the certificate of Heart of Iowa to include service to those exchanges.

Heart of Iowa states that it cannot provide direct substitutes for either the Premium Calling Plan or the Extended Local Calling Plan.

Heart of Iowa proposes to offer a new discounted nationwide toll plan to substitute for the loss of the Premium Calling Plan and the Extended Local Calling Plan. Heart of Iowa has determined that most affected customers will benefit by enrolling in the new nationwide plan. The few customers who may not benefit appear to be using Iowa Telecom's calling plans to connect to non-local Internet service providers (ISPs). Mr. Schmidt notes that customers in the three exchanges will have more than three local ISPs available. Mr. Schmidt also notes that transferred customers in Conrad and Steamboat Rock will have additional EAS routes to extend their local service.

The filing also includes the Affidavit of Steven P. Harms, a Certified Public Accountant and Partner in Kiesling Associates, LLP, which has prepared audited financial statements for Heart of Iowa for over 30 years. Mr. Harms states that Heart of Iowa is in excellent financial condition and its plans to purchase and operate the three exchanges are within its financial means.

The filing also contains the Affidavit of D. Michael Anderson, Vice President-External Affairs for Iowa Telecom. The affidavit pertains to the impact of the sale on Iowa Telecom's price plan. Under Iowa Code § 476.99(1), a price-regulated utility must make provisions to reflect in rates any changes due to changes in average costs resulting from the sale of exchanges. Mr. Anderson states that the impact of

the sale of the three exchanges on average costs “would be so insignificant that they would not affect rates.”

Iowa Code § 476.29(3) provides for the transfer of certificates of public convenience and necessity. The statute provides that for purposes of a rate-regulated local exchange utility, a transfer shall be treated by the Board in the same manner as a reorganization pursuant to §§ 476.76 and 476.77. The joint applicants state that the reorganization provisions of §§ 476.76 and 476.77 are not applicable, because § 476.76 defines reorganization as the sale of any “substantial part” of the utility’s assets. The rules under 199 IAC 32(2) define “substantial part” to include assets “with a value in excess of 3 percent of the utility’s Iowa jurisdictional utility revenue during the immediately preceding calendar year or \$5 million, whichever is greater.” The joint applicants state that the sale of the three exchanges did not exceed \$5 million. Accordingly, the joint applicants are not required to obtain approval under the reorganization statutes.

Iowa Code § 476.20(1) states that a utility shall not discontinue service to a community unless permission is obtained from the Board. The rules under 199 IAC 7.12 address the discontinuance of service incident to utility property transfer. Within 30 days, the Board must either approve an application or docket it for further investigation; otherwise, it will be deemed approved. The criterion for granting an application is if the Board finds the transferee ready, willing, and able to provide comparable utility service.

For this joint application, the only area of concern appears to be whether the substitute calling plan services proposed by Heart of Iowa constitute a “comparable utility service” to Iowa Telecom’s local calling plans. Heart of Iowa’s substitute nationwide toll plan is not identical to Iowa Telecom’s local calling plans, which will be discontinued in these exchanges if the transfer is approved. Most customers will find the substitute an economical choice, although customers on the upper limits of use on Iowa Telecom’s local calling plans may pay more on Heart of Iowa’s substitute toll plan. However, Heart of Iowa’s substitute plan provides nationwide long distance, whereas Iowa Telecom’s plans reach only 30 miles. Additionally, Heart of Iowa’s substitute toll plan will be supplemented by additional extended area service routes in two of the exchanges. Taken together, the services proposed by Heart of Iowa constitute comparable utility service to Iowa Telecom’s service for purposes of this docket. The Board finds that the requirements of § 476.20(1) are satisfied.

The Board's rules under 199 IAC 22.23 require telecommunications service providers to obtain customer authorization prior to enacting a change in service. Under the joint application, toll and local service customers will be transferred from Iowa Telecom to Heart of Iowa. On December 16, 2003, the joint applicants filed a request for waiver of 199 IAC 22.23(2), which has been identified as Docket No. WRU-03-71-263. If approved, the waiver would allow the joint applicants to mail customers a notice rather than obtaining authorization from each customer to be transferred. As part of the waiver request, the joint applicants provided a copy of the proposed notice letter. The notice informs affected customers of the transfer of

service, the reduced rates, and options to substitute for Iowa Telecom's local calling plans. The notice letter also informs customers who use Iowa Telecom as their long distance carrier, that Heart of Iowa will be their new long distance carrier unless an alternative long distance carrier is chosen prior to the transition date.

Pursuant to 199 IAC 1.3, the Board may waive its rules if the Board finds that application of the rule would pose an undue hardship; that waiver will not prejudice the substantial legal rights of any person; that the provisions of the rule are not mandated by a statute or other rule of law; and that substantially equal protection of the public health, safety, and welfare will be afforded by other means. Here, application of rule 22.23 would pose an undue hardship on Iowa Telecom and Heart of Iowa by requiring that they obtain a substantial number of authorizations; waiver will not prejudice the substantial legal rights of any person, since the customers will receive the same or better service at the same or lower rates; the provisions of the rule are not mandated by any other rule of law; and substantially equal protection of the public health, safety, and welfare will be provided by the notice that Iowa Telecom and Heart of Iowa will send to the affected customers. The request for waiver will be granted.

In connection with the transfer, the joint applicants state they will require a waiver from the Federal Communications Commission (FCC) of the FCC's study area requirements. It has been the FCC's policy not to accept a waiver petition unless the state regulatory agency indicates that it does not object to changes in the study area boundaries. In previous transfers of this type, the Board has affirmatively stated that

it does not object to the FCC granting a study area waiver.<sup>2</sup> The Board finds that it is appropriate to make the same statement in this docket.

Finally, it appears Iowa Telecom will need to amend its tariffs to account for the transfer by deleting references to these three exchanges. Since Heart of Iowa already serves the three exchanges, it will not need to amend its tariff to add the exchanges. Heart of Iowa will need to file exchange boundary maps for the three exchanges. The Board will require the filing of amended tariffs and maps within 30 days of this order.

**IT IS THEREFORE ORDERED:**

1. The joint application for approval of discontinuance of service and transfer of certificate with regard to the Conrad, Eldora, and Steamboat Rock, Iowa, exchanges filed November 19, 2003, by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, and Heart of Iowa Communications Cooperative is approved to be effective upon the issuance of this order.

2. Heart of Iowa Communications Cooperative is directed to file exchange boundary maps showing the addition of the Conrad, Eldora, and Steamboat Rock, Iowa, exchanges to its territory within 30 days of this order.

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<sup>2</sup> See, for example, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom and Norway Rural Telephone Service, "Order Approving Joint Application for Discontinuance of Service and Authorizing Transfer of Certificate," Docket No. SPU-02-2, ordering clause #4, issued March 12, 2002.

3. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is directed to file new tariff pages deleting references to the Conrad, Eldora, and Steamboat Rock exchanges within 30 days of this order.

4. The Board affirmatively states that it does not object to the request that a study area waiver be granted by the FCC.

5. The request for waiver of 199 IAC 22.23, filed on December 16, 2003, is granted.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 19<sup>th</sup> day of December, 2003.